

AMENDED IN SENATE JUNE 15, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 96**

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**Introduced by Assembly Member Ruskin**  
**(Principal coauthor: Assembly Member Chesbro)**  
**(Coauthors: Assembly Members Carter, Miller, and Nielsen)**  
*(Coauthors: Senators Hancock, Lowenthal, and Steinberg)*

January 6, 2009

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An act to amend Sections 25299.81, 25299.105, 25299.109, and 25299.117 of, *and to amend and repeal Section 41964 of*, the Health and Safety Code, relating to public health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 96, as amended, Ruskin. Gasoline: underground storage tanks.

(1) Existing law provides for the regulation of underground storage tanks by the State Water Resources Control Board. Existing law requires the board to take specified actions with regard to unauthorized releases from petroleum underground storage tanks, including, among other things, adopting regulations requiring the owners of those tanks to undertake certain actions.

Existing law provides for a grant and loan program for small businesses to pay specified costs of complying with the underground storage tank regulations adopted by the board. Existing law contains various eligibility criteria for grant funds, including a requirement that

the grant applicant, the applicant's family, or an affiliated entity, has owned and operated the project tank since January 1, 1997.

This bill would delete that ownership requirement from the grant eligibility criteria.

(2) Under existing law, the grant and loan program is funded through the Petroleum Underground Storage Tank Financing Account. Existing law allows not more than 33% of the available funds to be used for the purpose of providing grants. Existing law requires the interest and other increments resulting from the investment of the funds in the account to be placed in a separate subaccount to be expended for the administration of the program.

This bill would make a one time transfer of \$8,000,000 from the administrative subaccount to be appropriated for the purpose of making grants and loans in the 2008–09 and 2009–10 fiscal years. *The bill would establish specified criteria for the grants and loans awarded from funds made pursuant to this transfer.*

(3) Existing law, the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, provides, ~~in part~~, for the establishment of an Underground Storage Tank Cleanup Fund to pay for various costs of corrective action and abatement for the unauthorized release of hazardous materials from underground storage tanks. The provisions of this act will expire January 1, 2016. Under existing law, upon the expiration of the Petroleum Underground Storage Tank Financing Account on January 1, 2011, the funds remaining in that account revert to the Underground Storage Tank Cleanup Fund. *The grant and loan program provisions would be repealed on January 1, 2011.*

This bill would extend the repeal date of the grant and loan program as well as the Petroleum Underground Storage Tank Financing Account to January 1, 2016. Additionally, it would make provisions for the payment of loans and grants, conditions of which were effective prior to January 1, 2016, from the Underground Storage Tank Cleanup Fund and the Petroleum Underground Storage Tank Financing Account, as specified.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 25299.81 of the Health and Safety Code  
2 is amended to read:

3     25299.81. (a) Except as provided in subdivisions (b) and (c),  
4 this chapter shall remain in effect only until January 1, 2016, and  
5 as of that date is repealed, unless a later enacted statute, which is  
6 enacted before January 1, 2016, deletes or extends that date.

7     (b) Notwithstanding subdivision (a), Article 1 (commencing  
8 with Section 25299.10), Article 2 (commencing with Section  
9 25299.11), and Article 4 (commencing with Section 25299.36)  
10 shall not be repealed and shall remain in effect on January 1, 2016.

11     (c) The repeal of certain portions of this chapter does not  
12 terminate any of the following rights, obligations, or authorities,  
13 or any provision necessary to carry out these rights and obligations:

14     (1) The filing and payment of claims against the fund, including  
15 the costs specified in subdivisions (c), (e), and (h) of Section  
16 25299.51, and claims for commingled plumes, as specified in  
17 Article 11 (commencing with Section 25299.90), until the moneys  
18 in the fund are exhausted. Upon exhaustion of the fund, any  
19 remaining claims shall be invalid.

20     (2) The repayment of loans, outstanding as of January 1, 2016,  
21 due and payable to the board.

22     (3) The recovery of moneys reimbursed to a claimant to which  
23 the claimant is not entitled, or the resolution of any cost recovery  
24 action.

25     (4) The collection of unpaid fees that are imposed pursuant to  
26 Article 5 (commencing with Section 25299.40), as that article read  
27 on December 31, 2015, or have become due before January 1,  
28 2016, including any interest or penalties that accrue before, on, or  
29 after January 1, 2016, associated with those unpaid fees.

30     (5) (A) The filing of an application for funds from, and the  
31 making of payments from, the Underground Storage Tank  
32 Petroleum Contamination Orphan Site Cleanup Fund pursuant to  
33 Section 25299.50.2, any action for the recovery of moneys paid  
34 pursuant to Section 25299.50.2 to which the recipient is not  
35 entitled, and the resolution of that cost recovery action.

36     (B) Upon liquidation of funds in the Underground Storage Tank  
37 Petroleum Contamination Orphan Site Cleanup Fund, the obligation

1 to make a payment from the Underground Storage Tank Petroleum  
2 Contamination Orphan Site Cleanup Fund is terminated.

3 (6) (A) The payment of loans and grants, consistent with the  
4 terms of agreements that were effective prior to January 1, 2016,  
5 from the Underground Storage Tank Cleanup Fund, pursuant to  
6 this chapter or the Petroleum Underground Storage Tank Financing  
7 Account pursuant to Chapter 6.76 (commencing with Section  
8 25299.100). Upon exhaustion of the Underground Storage Tank  
9 Cleanup Fund, any remaining claims for payment of grants or  
10 loans shall be invalid.

11 (B) The amount of money disbursed for grants and loans  
12 pursuant to Chapter 6.76 (commencing with Section 25299.100)  
13 shall not exceed the sum of following:

14 (i) The amount that reverts to the Underground Storage Tank  
15 Cleanup Fund pursuant to Section 25299.111.

16 (ii) Amounts recovered through the repayment of loans granted  
17 pursuant to Chapter 6.76 (commencing with Section 25299.100).

18 (iii) The resolution of any cost recovery action filed prior to  
19 January 1, 2016, or the initiation of an action or other collection  
20 process to recover defaulted loan moneys due to the board or to  
21 recover money paid to a grant or loan recipient pursuant to Chapter  
22 6.76 (commencing with Section 25299.100) to which the recipient  
23 is not entitled.

24 (d) The board shall continuously post and update on its Internet  
25 Web site, but at a minimum, annually on or before September 30,  
26 information that describes the status of the fund and shall make  
27 recommendations, when appropriate, to improve the efficiency of  
28 the program.

29 SEC. 2. Section 25299.105 of the Health and Safety Code is  
30 amended to read:

31 25299.105. (a) The board shall make grant funds available  
32 from the Petroleum Underground Storage Tank Financing Account  
33 to eligible grant applicants who meet all of the following eligibility  
34 requirements:

35 (1) The grant applicant is a small business, pursuant to the  
36 following requirements:

37 (A) The grant applicant meets the conditions for a small business  
38 concern as defined in Section 632 of Title 15 of the United States  
39 Code, and in the federal regulations adopted to implement that  
40 section, as specified in Part 121 (commencing with Section

1 121.101) of Chapter I of Title 13 of the Code of Federal  
2 Regulations.

3 (B) The grant applicant employs fewer than 20 full-time and  
4 part-time employees, is independently owned and operated, and  
5 is not dominant in its field of operation.

6 (2) The principal office of the grant applicant is domiciled in  
7 the state and the officers of the grant applicant are domiciled in  
8 this state.

9 (3) All tanks owned and operated by the grant applicant are  
10 subject to compliance with Chapter 6.7 (commencing with Section  
11 25280); and the regulations adopted pursuant to that chapter.

12 (4) The facility where the project tank is located has sold at  
13 retail less than 900,000 gallons of gasoline annually for each of  
14 the two years preceding the submission of the grant application.  
15 The number of gallons sold shall be based upon taxable sales  
16 figures provided to the State Board of Equalization for that facility.

17 (5) The grant applicant owns or operates a tank that is in  
18 compliance with ~~Section 25290.1, 25290.2, or 25291, or~~  
19 ~~subdivisions (d) and (e) of Section 25292, and the regulations~~  
20 ~~adopted to implement those sections.~~ *all of the following:*

21 (A) *Section 41954.*

22 (B) *Any of the following:*

23 (i) *Section 25290.1.*

24 (ii) *Section 25290.2.*

25 (iii) *Section 25291.*

26 (iv) *Subdivisions (d) and (e) of Section 25292.*

27 (C) *Any regulation implementing the applicable sections*  
28 *required for compliance with subparagraphs (A) and (B).*

29 (6) The facility where the project tank is located was legally in  
30 business retailing gasoline after January 1, 1999.

31 (b) Grant funds may only be used to pay the costs necessary to  
32 comply with the requirements of Section 25284.1, 25292.4, or  
33 25292.5.

34 (c) If the total amount of grant requests by eligible grant  
35 applicants to the board pursuant to this section exceeds, or is  
36 anticipated to exceed, the amount in the Petroleum Underground  
37 Storage Tank Financing Account, the board may adopt a priority  
38 ranking list to award grants based upon the level of demonstrated  
39 financial hardship of the eligible grant applicant or the relative

1 impact upon the local community where the project tank is located  
2 if the claim is denied.

3 SEC. 3. Section 25299.109 of the Health and Safety Code is  
4 amended to read:

5 25299.109. (a) The Petroleum Underground Storage Tank  
6 Financing Account is hereby created in the State Treasury. The  
7 Petroleum Underground Storage Tank Financing Account is created  
8 for both of the following purposes:

9 (1) Receiving federal, state, and local money.

10 (2) Receiving repayments of loans and interest and late fees on  
11 those accounts.

12 (b) Upon appropriation by the Legislature, funds in the account  
13 shall be used by the board only to make loans and grants pursuant  
14 to this chapter.

15 (c) The board shall annually make available not more than 33  
16 percent of the available funds from the account for the purposes  
17 of providing grants pursuant to this chapter. *Funds transferred*  
18 *pursuant to subdivision (e) shall not be used in calculating the*  
19 *maximum amount that may be made available for grant funding.*

20 (d) Notwithstanding Section 16305.7 of the Government Code,  
21 all interest or other increments resulting from the investment of  
22 the funds in the Petroleum Underground Storage Tank Financing  
23 Account pursuant to Article 4 (commencing with Section 16470)  
24 of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government  
25 Code shall be deposited in a subaccount of the Petroleum  
26 Underground Storage Tank Financing Account, and expended only  
27 pursuant to Section 25299.113.

28 (e) (1) The sum of eight million dollars (\$8,000,000) is hereby  
29 transferred from the subaccount established in subdivision (d) to  
30 the Petroleum Underground Storage Tank Financing Account and  
31 is appropriated for the purpose of making grants and loans pursuant  
32 to this chapter in the 2008–09 and 2009–10 fiscal years.

33 (2) *An application for grant funding pursuant to this subdivision*  
34 *must have been received not later than April 1, 2009.*

35 (3) *If a grant or loan from moneys transferred pursuant to this*  
36 *subdivision is being requested for the purpose of compliance with*  
37 *Enhanced Vapor Recovery Phase II regulations, then the applicant*  
38 *must have applied for or obtained a permit from the air quality*  
39 *management district by April 1, 2009, and have obtained an*

1 *enforcement agreement or other binding obligation by June 30,*  
2 *2009.*

3 SEC. 4. Section 25299.117 of the Health and Safety Code is  
4 amended to read:

5 25299.117. This chapter is repealed as of January 1, 2016,  
6 unless a later enacted statute that is enacted on or before January  
7 1, 2016, deletes or extends that date.

8 SEC. 5. *Section 41964 of the Health and Safety Code is*  
9 *amended to read:*

10 41964. (a) The state board shall not require a gasoline  
11 dispensing facility that meets all of the following requirements to  
12 undergo an Enhanced Vapor Recovery Phase II upgrade, *as*  
13 *required pursuant to Section 41954 and implementing regulations,*  
14 *until April 1, 2011:*

15 ~~(a)~~

16 (1) As of January 1, 2009, have installed a state board certified  
17 Phase II vapor recovery system.

18 ~~(b)~~

19 (2) Have an annual gasoline throughput of 240,000 gallons or  
20 less.

21 ~~(c)~~

22 (3) Operate in a county that has a population of less than  
23 100,000.

24 ~~(d)~~

25 (4) Operate in a basin not classified as nonattainment for ozone.

26 (b) *This section shall remain in effect only until July 1, 2011,*  
27 *and as of that date is repealed, unless a later enacted statute, that*  
28 *is enacted before July 1, 2011, deletes or extends that date.*

29 ~~SEC. 5.~~

30 SEC. 6. This act is an urgency statute necessary for the  
31 immediate preservation of the public peace, health, or safety within  
32 the meaning of Article IV of the Constitution and shall go into  
33 immediate effect. The facts constituting the necessity are:

34 In order to immediately finance projects critical to the protection  
35 of the environment, it is necessary that this act, ~~at the earliest~~  
36 ~~possible time,~~ take effect immediately.